

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

_____)	
Benjamin Edelman,)	
Third-Party Complainant,)	
)	
v.)	Docket DOT-OST-2021-0157
)	
American Airlines, Inc.)	
_____)	

ANSWER OF AMERICAN AIRLINES, INC.

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January 31, 2022

)	
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Third-Party Complainant,)	
)	
v.)	Docket DOT-OST-2021-0157
)	
American Airlines, Inc.)	
)	

Pursuant to 14 CFR §§ 302.405(a) and 302.408(b), American Airlines, Inc.¹ (“American”) hereby answers the Complaint of Benjamin Edelman (“Complainant”) filed in the above-referenced docket. For the reasons stated below, American respectfully requests that the Department dismiss the Complaint pursuant to 14 CFR § 302.406(a)(2) without instituting an enforcement proceeding.

American acknowledges that at the time of the Complaint the AA Vacations website (aavacations.com) in some instances described carrier-imposed fees as “Other taxes” in a pop-up window if a user clicked on a “Taxes and Carrier Imposed Fees” hyperlink associated with an itinerary. Since learning of this issue, American has acted to address it. As explained below, the issue occurred only on the AA Vacations website and even then only in a narrow context, there is no evidence that it ever influenced any booking decision.

¹ Although the Complaint named “American Airlines” as the respondent, the corporate entity that operates the AA Vacations brand is American Airlines, Inc.

and the Complaint does not allege that American is otherwise out of compliance with the Department's full fare advertising rule in any way. In particular, there is no suggestion that American incorrectly quoted, charged, or displayed the entire price to be paid by the customer. Under the circumstances, it is unnecessary for the Department to institute an enforcement proceeding, and the Department should reject Complainant's requested relief.

A. The Complaint Identifies an Isolated Issue

The issue that the Complaint identifies is neither broad nor deep. To the contrary, several facts demonstrate that it is isolated in nature.

First, the Complaint identifies an issue with only the AA Vacations website, which sells vacation packages. That website, aavacations.com, is a distinct channel from AA.com. The two sites run on different software platforms. As measured both by the volume of bookings and by revenue, AA Vacations accounts for, in relative terms, a less substantial portion of American's business.

Second, as apparent in the Complaint's allegations, the standard information displayed to all users when booking an itinerary at aavacations.com did, in itself, comply with the full fare advertising rule. The screenshot in Paragraph 3 of the Complaint and the similar first screenshot in Paragraph 7 of the Complaint are perfectly consistent with the requirements of 14 CFR § 399.84(a), including with respect to the listing of "Taxes and Carrier Imposed Fees." A potential issue arose only if a user then clicked on the hyperlinked "Taxes and Carrier Imposed Fees" text.

Third, if a user clicked on the "Taxes and Carrier Imposed Fees" hyperlink and opened a pop-up window that displayed "Other taxes" in the same amount as listed on the previous screen for "Taxes and Carrier Imposed Fees," that information was in many cases

accurate. That is because many AA Vacations itineraries involve zero carrier-imposed fees, including domestic U.S. itineraries and itineraries to other regions of the world that collectively account for the vast majority of AA Vacations volume. In those instances—which reflect the more common scenario—“Other taxes” is an accurate description of the full amount that constitutes “Taxes and Carrier Imposed Fees,” because there are no carrier-imposed fees. The Complaint shows only the less common scenario, however, by cherry-picking examples where the itinerary includes a flight to London Heathrow (LHR), a destination for which there are carrier-imposed fees. See Compl. ¶¶ 3, 7.

B. American Has Addressed the Identified Issue

After learning of the issue, American took action by eliminating the hyperlink associated with “Taxes and Carrier Imposed Fees,” such that a user would not have an option to reach any pop-up window displaying “Other taxes.” This adjustment preserves a standard display for all users, as per the screenshot in Paragraph 3 and the similar first screenshot in Paragraph 7 of the Complaint, that is perfectly consistent with the requirements of 14 CFR § 399.84(a), including with respect to the listing of “Taxes and Carrier Imposed Fees.” Simply put, the potential issue identified in the Complaint no longer exists.

C. Complainant’s Requested Relief Is Unwarranted

The Complaint requests that the Department open an investigation of American and impose civil penalties. Those steps are unnecessary under the circumstances.

First, the Complaint concerns an isolated issue that (i) affected only one American sales channel that accounts for a relatively less substantial portion of American’s business, (ii) occurred not in the standard display but only if a user clicked on a “Taxes and Carrier

Imposed Fees” hyperlink, and (iii) even if a user did click the hyperlink, showed information for “Other taxes” that often was accurate. Moreover, there is no allegation that American incorrectly quoted, charged, or displayed the entire price to be paid by the customer, which is the core of the full fare advertising rule.

Second, notwithstanding the Complaint’s speculation, there is no evidence that the issue identified in the Complaint ever affected anybody’s booking decision or caused actual harm. American is unaware of receiving any other complaints regarding the displayed amount of “Other taxes” in the pop-up window that appeared if a user clicked the “Taxes and Carrier Imposed Fees” hyperlink in the AA Vacations website booking process. For Complainant’s own part, the Complaint does not allege that he actually made an AA Vacations booking, nor even that he was actually considering making a booking. In place of any evidence of actual harm, the Complaint substitutes bluster that attempts to connect the narrow issue identified here to a purported “pattern of misconduct” that supposedly “should be treated as intentional.” Compl. ¶¶ 15, 17. To the contrary, American’s intent has been and is to comply with the full fare advertising rule. The issue identified in this Complaint occurred in a different location than had been identified in previous Departmental proceedings, and it is limited in scope in comparison to the more extensive issues alleged in Complainant’s earlier complaint to the Department in 2013 concerning other characterizations by American about taxes and carrier-imposed fees. See *id.* ¶ 12 & n.1. The latest cease-and-desist order that this December 2021 Complaint points to is from five years prior in 2016 relating to underlying circumstances that occurred and were resolved back in 2013. See *id.* ¶ 13; Order 2016-12-12 at 2-3.

Third, after learning of the issue, American acted in good faith to address it. The issue is no longer live. American takes seriously its obligation to comply with the full fare advertising rule.

Beyond his requests that the Department open an investigation and impose civil penalties, Complainant's other requested relief is especially unfounded. The Complaint proposes that the Department order American "to refund to ticket purchasers all monies represented to ticket purchasers as 'taxes' or government-imposed fees, but not actually remitted to governments." Compl. ¶ 19. But that extreme request is not grounded in the remedies available under 49 U.S.C. § 41712 and is unjustified in any event. To the extent the Complaint proposes such a refund as a form of private damages, such damages are not authorized under Section 41712. See *Statland v. American Airlines, Inc.*, 998 F.2d 539, 541 (7th Cir. 1993). The Complaint further asks the Department to require American to self-examine and report back to the Department about "any further problems," and to identify staff for "corrective training." Compl. ¶ 19. These extraordinary and intrusive demands for injunctive relief are grossly disproportionate to the narrow issue that the Complaint identified and that American has already addressed.

American respectfully requests that the Department deny all of Complainant's requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

II. AMERICAN'S RESPONSES TO ALLEGATIONS

American answers each paragraph of the Complaint in the order in which it appears in the Complaint, as follows:

1. Paragraph 1 of the Complaint is not an allegation but a characterization of the Complaint and filings in prior litigation, which documents speak for themselves and require no response. Paragraph 1 of the Complaint additionally states legal conclusions to which no response is required. To the extent a response is deemed to be required, American admits that at the time of the Complaint the AA Vacations website (aavacations.com) in some instances described carrier-imposed fees as “Other taxes” in a pop-up window if a user clicked on a “Taxes and Carrier Imposed Fees” hyperlink associated with an itinerary. American otherwise denies Paragraph 1 of the Complaint.

2. American admits that at the time of the Complaint the AA Vacations website (aavacations.com) in some instances described carrier-imposed fees as “Other taxes” in a pop-up window if a user clicked on a “Taxes and Carrier Imposed Fees” hyperlink associated with an itinerary. American otherwise denies the allegations of Paragraph 2 of the Complaint.

3. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 3 of the Complaint and the accompanying screenshot, and therefore denies the allegations. American notes that the Complaint does not provide full details of the itinerary allegedly queried, nor does the Complaint allege that Complainant completed booking the itinerary. If the screenshot is an accurate depiction, it speaks for itself and no response is required.

4. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 4 of the Complaint and the accompanying screenshot, and therefore denies the allegations. American notes that the Complaint does not provide full details of the itinerary allegedly queried, nor does the Complaint allege that Complainant completed booking the

itinerary. If the screenshot is an accurate depiction, it speaks for itself and no response is required.

5. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 5 of the Complaint and the accompanying table, and therefore denies the allegations. American notes that the Complaint does not provide full details of the itinerary allegedly queried, nor does the Complaint allege that Complainant completed booking the itinerary. If the table is an accurate depiction, it speaks for itself and no response is required.

6. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 6 of the Complaint, and therefore denies the allegations.

7. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 7 of the Complaint and the accompanying screenshots, and therefore denies the allegations. American notes that the Complaint does not provide full details of the itinerary allegedly queried, nor does the Complaint allege that Complainant completed booking the itinerary. If the screenshot is an accurate depiction, it speaks for itself and no response is required.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required. Paragraph 8 of the Complaint additionally contains a characterization of Departmental guidance and consent orders from prior litigation, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American admits that at the time of the Complaint the AA Vacations website (aavacations.com) in some instances described carrier-imposed fees as "Other taxes" in a

pop-up window if a user clicked on a “Taxes and Carrier Imposed Fees” hyperlink associated with an itinerary. American otherwise denies Paragraph 8 of the Complaint.

9. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 9 of the Complaint, and therefore denies the allegations. Paragraph 9 of the Complaint additionally states legal conclusions to which no response is required.

10. American lacks knowledge sufficient to admit or deny the allegations of Paragraph 10 of the Complaint, and therefore denies the allegations. Paragraph 10 of the Complaint additionally states a legal conclusion to which no response is required.

11. American admits that it is a sophisticated carrier and is among the largest airlines in the world, but otherwise denies the allegations of the first two sentences of Paragraph 11 of the Complaint. American lacks knowledge sufficient to admit or deny the allegations of the third sentence of Paragraph 11 of the Complaint, and therefore denies the allegations.

12. Paragraph 12 of the Complaint, including footnote 1, is a characterization of filings in prior litigation, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American admits that the quoted excerpts appear in Order 2013-12-6 and otherwise denies the allegations of Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint is a characterization of filings in prior litigation, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American denies the allegations of Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint is a characterization of filings in prior litigation, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American denies the allegations of Paragraph 14 of the Complaint.

15. American denies the allegations of Paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint is a characterization of filings in prior litigation, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American admits that the quoted excerpts appear in its March 22, 2013 answer and otherwise denies the allegations of Paragraph 16 of the Complaint.

17. American denies the allegations of the first, fourth, and last sentences of Paragraph 17 of the Complaint. The remainder of Paragraph 17 of the Complaint is a characterization of filings in prior litigation, correspondence, and Departmental guidance, which documents speak for themselves and require no response. To the extent a response is deemed to be required, American admits that the quoted excerpts appear in its March 22, 2013 answer, its January 7, 2014 answer (with the exception of “incorrect display” and “misstatement”), and its April 17, 2017 answer, and otherwise denies the allegations of Paragraph 17 of the Complaint.

18. American lacks knowledge sufficient to admit or deny the allegations of the third sentence of Paragraph 18 of the Complaint, and therefore denies the allegations. American denies the remaining allegations of Paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint states Complainant’s prayer for relief. American respectfully requests that the Department deny all of Complainant’s requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

To the extent that the Complaint contains any allegation that has not been specifically admitted or denied herein, American denies any such allegation.

III. AFFIRMATIVE DEFENSES

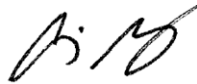
American asserts the following affirmative defenses:

1. The Complaint fails to state a claim upon which relief may be granted.
2. Complainant lacks a private right of action under 49 U.S.C. § 41712.
3. Complainant has not suffered any harm.
4. Complainant lacks standing.
5. The Complaint is moot.

American reserves its right to supplement these affirmative defenses to the extent new information or evidence arises if this action proceeds.

WHEREFORE, American respectfully requests that the Department deny all of Complainant's requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of American Airlines, Inc. has been served by email this January 31, 2022, upon each of the following persons:

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